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COOK INLET COMMUNICATIONS

FEDERAL COMMUNICATIONS COMMISSION  
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COOK INLET COMMUNICATIONS

March 16, 1994

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90-314

William E. Kennard, Esq.  
General Counsel  
Federal Communications Commission  
1919 M Street, N.W. - Room 614  
Washington, D.C. 20554

Dear Mr. Kennard:

In response to some of the helpful questions you asked in our prior discussion regarding §1071 reinvestment in cellular and PCS, and the pending reconsideration proceeding for PCS, we went back and focused on:

- (a) the commission's authority, on a practical basis, to effectively resolve the issue (we concluded it was there); and
- (b) the policy reasons supporting resolution of the issue in favor of broader reinvestment (they appear to be strong).

Attached is a memo from our FCC lawyers addressing these points.

From a practical standpoint, it appears clear to us that all uses of the spectrum will become more and more alike in key respects. It is also clear from our perspective that minority groups in general are currently missing out on strategic transactions in broadcast as well as cellular because they cannot bring adequate reinvestment options to the table with a tax certificate. Finally, and perhaps most important, the ability of current radio, TV and cable owners to accomplish a §1071 reinvestment in PCS will materially increase the potential for minorities to participate in the broadcast, cable and PCS industries.

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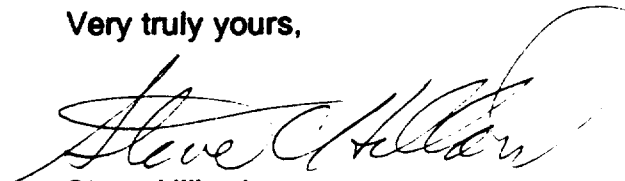
**William Kennard**

**March 16, 1994**

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Again, on behalf of Cook Inlet Region, Inc., I want to thank you for hearing out our recommendations.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Steve Hillard", written in dark ink.

**Steve Hillard**  
**Vice President**

cc: Gen. Docket 90.314 (2 copies)

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March 17, 1994

MEMORANDUM

Re: FCC Tax Certificates

The purpose of this memorandum is to show why the Federal Communications Commission (the "Commission") has both the authority and a basis to issue a policy statement interpreting the term radio broadcasting station ("RBS") as used in Section 1071(a) of the Internal Revenue Code<sup>1/</sup> to include cellular and personal communications radio systems.

Section 1071(a) authorizes the Commission to certify when the sale or exchange of property is necessary or appropriate to effectuate a change in Commission policy with respect to the ownership and control of RBSSs, thereby entitling the seller to certain tax benefits. Section 1071(a) represents a delegation to the Commission of powers normally reserved to the Internal Revenue Service. Because the interpretation of RBS is within the expertise of the Commission, the Internal Revenue Service likely will follow a direct policy announcement by the Commission that the term RBS includes cellular and personal communications radio systems,

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<sup>1/</sup> All section references are to the Internal Revenue Code of 1986, as amended.

thereby entitling parties reinvesting in these types of technologies to tax benefits.

The exercise of the Commission's authority under Section 1071(a) has proven highly effective in implementing important Commission policies, such as increasing minority ownership in broadcasting and reducing certain cross-ownership among telecommunications entities. The further application of these policies in the cellular and personal communications industries is particularly important because minorities are currently under-represented and cellular systems are subject to cross-ownership rules.

Ample statutory authority exists for the Commission to adopt a policy that RBS includes cellular and personal communication systems. For example: (1) The Commission authorized the issuance of tax certificates for "any sale or exchange of property in connection with voluntary agreements for the relocation of fixed microwave facilities" during a period in which microwave users would not be subject to involuntary relocation by PCS licensees, Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Third Report and Order, 8 F.C.C. Rcd. 6589, 6606 (1993); and (2) the Commission has issued tax certificates in connection with the sale of cable systems compelled by its cross-ownership and minority ownership policies. See Continental Telephone Corp., 43 F.C.C.2d 827, 838, 28 R.R.2d 1163 (1973), recon., 51 F.C.C. 2d

284, 32 R.R.2d 1203 (1975) (tax certificate issued for sale of cable to further FCC cross-ownership policies); Cosmos Cablevision Corp., 33 F.C.C.2d 293, 32 R.R.2d 155 (1972) (similar); Policy Statement on Minority Ownership of Cable Television Facilities, 52 R.R.2d 1469, 1472 (1982) (Commission authorized issuance of tax certificates for sales of cable to further its minority ownership policy).

The Commission has already identified the analytical path to a policy that RBS includes cellular and personal communication systems. In Telocator Network of America, 58 Rad. Reg. 2d (P & F) 1443 (1985), recon. dismissed, 1 F.C.C. Rcd. 509 (1986), after reviewing the legislative history of Section 1071 and prior Commission precedent, the Commission ruled that the term RBS should be given an expansive construction which, in that case, permitted the issuance of tax certificates in connection with the transfer of cellular systems.

Such a policy is necessary to realign Section 1071(a) with the current state of technology in the telecommunications industry. In particular, as the telecommunications industry moves rapidly toward a single transmission technology, the historic distinctions between cellular systems and personal communications systems and other mass-communications technologies have, and will continue to, become increasingly difficult to maintain.

All wired and wireless media are converging to become part of this national information infrastructure. The currency of our new information economy will be digitized information. Communicators using television stations, cable systems, cellular systems, and personal communications systems all will transmit "bits." Indeed, the new 28 GHz local multipoint distribution service technology -- marketed under the name "CellularVision" -- promises to use attributes of cellular design to provide wireless digital telephony, video programming, data transmission and videoconferencing, all over the same communications system.

Just as television broadcasters will convert to advanced digital transmission to heighten their ability to participate in future communications, cellular licensees are converting to digital transmission and distributing programming content today. Personal communications systems will also use digital transmission.

Today, cellular is much more than a mere carrier of information or voice transmission service. Digital techniques and cellular digital packet data ("CDPD") transmission are changing the essential characteristics of cellular. As just one example, electronic publishing -- distributing newspapers over airwaves -- will be possible with cellular technology, permitting programming content to be distributed over cellular systems just as it is distributed over television and radio stations today. Moreover, news, weather and traffic advisory

services are now being implemented over cellular systems in virtually all major markets. As a result, the difference between broadcasting and cellular is one of degree rather than of kind. The same is true with respect to personal communications systems.

The failure to include cellular systems and personal communications systems within the definition of RBS now will thwart important Commission policies. For over 20 years, the Commission has demonstrated a serious commitment to encouraging minority participation in all fields of communications. Since the inception of the minority ownership policy, the tax certificate program has proven to be one of the most effective tools in increasing the diversity of ownership. Because of recent technological advances, cellular systems are now able to offer a variety of programming options. Personal communications systems are following close behind. Thus, including cellular systems and personal communications systems within the meaning of RBS will facilitate minority ownership and thus further the public interest in the diversification of programming.

Currently, minorities are severely under-represented in the cellular industry. If the Commission waits to implement the use of tax certificates as to the cellular industry and personal communications industry, non-minority firms currently entering or looking to enter these markets will gain a competitive advantage over minority firms that

subsequently attempt to enter the markets, and thereby foreclose the possibility of meaningful minority participation in the cellular and personal communications industries. On the other hand, quick and decisive action by the Commission will prevent any further disadvantage to minorities and strengthen the Commission's commitment to its existing minority ownership policy.

Such a result would be consistent with the intention of Congress in last year's enactment of legislation authorizing the Commission to issue FCC licenses by competitive bidding. In that legislation Congress required the Commission to ensure that "new and innovative technologies are readily accessible to the American people "by disseminating licenses among a wide variety of applicants, including "businesses owned by minority groups." In fact, Congress explicitly mandated the FCC to consider the use of tax certificates Omnibus Budget Reconciliation Act of 1993, Title VI, Section 6002 [to be codified at 47 U.S.C. § 309(j)(4)(d)]. Tax certificates, in this context, serve precisely the same goal.

For the foregoing reasons, the Commission has the authority and basis to issue a new policy statement interpreting the term RBS to include cellular systems and personal communications systems for purposes of Section 1071(a). Such a policy would further serve the public



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interest by promoting competitive cellular markets and personal communications markets.

Covington & Burling